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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/812,067	03/19/2001	C. Kumar N. Patel	256/051	8999	
34026 7:	590 08/26/2003				
JONES DAY			EXAMINER		
	TH STREET, SUITE 460 S, CA 90013-1025	0	NASSER, R	NASSER, ROBERT L	
			ART UNIT	PAPER NUMBER	
			3736	7	
			DATE MAILED: 08/26/2003	\bigcirc	

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

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	Application No.	Applicant(s)	Cd		
	09/812,067	PATEL ET AL.	O		
Office Action Summary	Examiner	Art Unit			
	Robert L. Nasser	3736			
The MAILING DATE of this communication apportunity of the second seco	ears on the cover sheet with the	correspondence addi	ess		
A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, - Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b). Status	6(a). In no event, however, may a reply be within the statutory minimum of thirty (30) dill apply and will expire SIX (6) MONTHS fro cause the application to become ABANDON	timely filed ays will be considered timely. In the mailing date of this com IED (35 U.S.C. § 133).	munication.		
1) Responsive to communication(s) filed on					
	— · s action is non-final.				
3) Since this application is in condition for allowa	nce except for formal matters,		merits is		
closed in accordance with the practice under <i>l</i> Disposition of Claims	<i>x parte Quayle</i> , 1935 C.D. 11,	453 O.G. 213.			
4)⊠ Claim(s) <u>1-55</u> is/are pending in the application.					
4a) Of the above claim(s) is/are withdraw					
5) Claim(s) is/are allowed.					
6) Claim(s) is/are rejected.					
7) Claim(s) is/are objected to.					
8) Claim(s) <u>1-55</u> are subject to restriction and/or e	lection requirement.				
Application Papers					
9)☐ The specification is objected to by the Examiner	:				
10) ☐ The drawing(s) filed on is/are: a) ☐ accep	ted or b)☐ objected to by the Ex	aminer.			
Applicant may not request that any objection to the		• •			
11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner.					
If approved, corrected drawings are required in rep					
12) The oath or declaration is objected to by the Exa	aminer.				
Priority under 35 U.S.C. §§ 119 and 120					
13) Acknowledgment is made of a claim for foreign	priority under 35 U.S.C. § 119	(a)-(d) or (f).			
a) ☐ All b) ☐ Some * c) ☐ None of: —					
1. Certified copies of the priority documents					
2. Certified copies of the priority documents		-			
3. Copies of the certified copies of the priorapplication from the International Bur* See the attached detailed Office action for a list of	eau (PCT Rule 17.2(a)).		tage		
14) Acknowledgment is made of a claim for domestic	priority under 35 U.S.C. § 119	(e) (to a provisional a	pplication).		
a) ☐ The translation of the foreign language products 15)☐ Acknowledgment is made of a claim for domestic					
Attachment(s)					
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of Informa	rry (PTO-413) Paper No(s) I Patent Application (PTO-			
S. Patent and Trademark Office					

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-44, 52-55, drawn to a diagnostic method9600, classified in class, subclass 532.
- II. Claims 45 and 46, drawn to a skin gas detector, classified in class 600, subclass 584.
- III. Claims 47-51, drawn to a method of delivering an optical radiation beam, classified in class 600, subclass 473.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus could be used to practice a materially different method, such as a method of collecting gas from the skin.

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as a device for collecting gas from the skin. See MPEP § 806.05(d).

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP §

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806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it only recites the step of delivering a beam to one location, not multiple locations. The subcombination has separate utility such as delivering beams for optical treatment of a patient.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

ELECTION OF SPECIES

If applicant elects group I, then the following election of species requirement is also pertinent. To be comoplete, applicant's response must elected one group and one species, and list the claims readable on the elects embodiment.

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I, drawn to figure 1.

Species II, drawn to figure 3.

Species III, drawn to figure 4.

Species IV, drawn to figure 5.

Species V, drawn to figure 8.

Species VI, drawn to figure 9.

Species VII, drawn to figure 13.

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Species VIII, drawn to figure 14.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, *** generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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A telephone call was made to Mr. Coe Bloomberg on August 18, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max. Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Robert L. Nasser

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FCGERT L. NASSER

PMICARY EXAMINER